

## Foreign Exchange Management Act,1999 (FEMA)

### External Commercial Borrowings (ECB) Policy – Relaxation in the period of parking of unutilized ECB proceeds in term deposits

[RBI/2021-22/16 A.P. \(DIR Series\) Circular No. 01 dated 7<sup>th</sup> April 2021](#)

Based on requests and with a view to providing relief to the ECB borrowers affected by the COVID-19 pandemic, the RBI has decided that the unutilised ECB proceeds drawn down on or before 1<sup>st</sup> March 2020 can be parked in term deposits with AD banks in India prospectively for an additional period up to 1<sup>st</sup> March 2022. Earlier, they were allowed to be parked for a maximum period of 12 months cumulatively. All other provisions of the ECB policy remain unchanged.

### Sponsor Contribution to an Alternative Investment Fund (AIF) set up in Overseas Jurisdiction, including International Financial Services Centres (IFSCs)

[RBI/2021-22/38 A.P.\(DIR Series\) Circular No. 04 dated 12<sup>th</sup> May 2021](#)

The RBI, has decided that any sponsor

contribution from a sponsor Indian Party (IP) to an AIF set up in an overseas jurisdiction, including IFSCs in India, as per the laws of the host jurisdiction, will be treated as Overseas Direct Investment (ODI). Accordingly, IP can set up AIF in overseas jurisdictions, including IFSCs, under the automatic route provided it complies with Regulation 7 of the Notification FEMA 120/2004-RB. All the other provisions will remain unchanged.

### Payments of margins transactions in Government Securities by Foreign Portfolio Investors (FPIs)

[RBI/2021-22/48 A.P. \(DIR Series\) Circular No.06 dated 4<sup>th</sup> June 2021](#)

All transactions in government securities concluded outside the recognized stock exchanges are settled on a guaranteed basis by the Clearing Corporation of India Ltd. (CCIL) which acts as the central counter party. Based on requests received, it has been decided to allow banks in India having an Authorised Dealer Category-1 licence under FEMA, 1999 to lend to

FPIs in accordance with their credit risk management frameworks for the purpose of placing margins with CCIL in respect of settlement of transactions involving Government Securities (including Treasury Bills and State Development Loans) by the FPIs.

### Filing of Form Foreign Liabilities and Assets (FLA)

The annual return on FLA is to be submitted by an Indian company/LLP which have received foreign investments and/or made foreign investments. Further, the Indian company/ LLP who has not submitted for FLA Return for the previous financial years can also make the non-compliance good by filing the same on the portal. If FLA return is initially uploaded on the basis of unaudited/provisional figures, then it would have to be revised with the final figures once the audit is completed. The due date for filing on the basis of unaudited financials is 15<sup>th</sup> July 2021. Revised return based on audited financials to be filed by 30<sup>th</sup> September 2021.

## Department for Promotion of Industry and Internal Trade (DPIIT)

### 74% FDI in insurance sector under automatic route

#### [Press Note No. 2 \(2021 series\)](#)

According to the Press note, DPIIT notified that the foreign direct investment (FDI) limit in the insurance sector under the automatic route is increased to 75% from erstwhile 49%, subject to sectoral conditions.

## Reserve Bank of India (RBI)

### Asset Classification and Income Recognition following the expiry of Covid-19 regulatory package

[RBI/2021-22/17 dated 7<sup>th</sup> April 2021](#)

The Hon'ble Supreme Court of India had pronounced its judgement in the matter of Small-Scale Industrial Manufacturers Association vs UOI & Ors. and other connected matters on 23<sup>rd</sup> March 2021. In this connection, the RBI has issued the following advise-

- **Refund/adjustment of 'interest on interest'**  
All lending institutions should immediately put in place a Board-approved policy to refund/adjust the 'interest on interest' charged to the borrowers during the moratorium period, i.e., 1<sup>st</sup> March 2020 to 31<sup>st</sup> August 2020 in conformity with the above judgement. The above reliefs will be applicable to all borrowers, including those who had availed of working capital facilities during the moratorium period, irrespective of whether moratorium had been fully or partially availed, or not availed COVID-19 Regulatory Package. Lending institutions should disclose the aggregate amount to be refunded/adjusted in respect of their borrowers based on the above reliefs in their financial statements (FS) for the year ending 31<sup>st</sup> March 2021.

- **Asset Classification**

Asset classification of borrower accounts by all lending institutions following the above judgment will continue to be governed by the extant instructions as clarified below.

- In respect of accounts which were not granted any moratorium in terms of the Covid19 Regulatory Package, asset classification should be as per the criteria laid out in the [Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances](#) or other relevant instructions as applicable to the specific category of lending institutions (IRAC Norms).

- In respect of accounts which were granted moratorium in terms of the COVID-19 Regulatory Package, the asset classification for the period from 1<sup>st</sup> March 2020 to 31<sup>st</sup> August 2020 will be governed in terms of the [Circular dated 17<sup>th</sup> April 2020](#), read with [Circular dated 23<sup>rd</sup> May 2020](#). For the period commencing 1<sup>st</sup> September 2020, asset classification for all such accounts should be as per the applicable IRAC Norms.

### External Commercial Borrowings (ECB) Policy – Relaxation in the period of parking of unutilised ECB proceeds in term deposits

[RBI/2021-22/16 dated 7<sup>th</sup> April 2021](#)

To providing relief to the ECB borrowers affected by the COVID-19 pandemic, as a one-time measure, the RBI has permitted the unutilised ECB proceeds drawn down on or before 1<sup>st</sup> March 2020 to be parked in term deposits with AD Category-I banks in India prospectively for an additional period up to 1<sup>st</sup> March 2022.

### Declaration of dividends by banks

[RBI/2021-22/23 dated 22<sup>nd</sup> April 2021](#)

As per this Circular, banks may pay dividend on equity shares from the profits for the financial year (FY) ended 31<sup>st</sup> March 2021, subject to the quantum of dividend being not more than 50% of the amount determined as per the dividend payout ratio.

### Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board

[RBI/2021-22/24 dated 26<sup>th</sup> April 2021](#)

This Notification will be applicable to all the Private Sector Banks including Small Finance Banks (SFBs) and wholly owned subsidiaries of Foreign Banks. It will not be applicable in the case of foreign banks operating as branches in India. Norms for other banks will be issued separately. Highlights are given below-

#### ▪ Chair and Board Meetings

The Chairman should be an independent

director (ID). In the absence of the Chairman the Board Meetings should be chaired by an ID. The quorum for the Board Meetings should be 1/3<sup>rd</sup> of the total strength of the Board or 3 directors, whichever is higher. At least half of the directors attending the Board Meetings should be ID.

#### • Audit Committee (AC)

The AC should be constituted with only non-executive directors (NEDs). The Chairman should not be a member of the AC. The AC should meet with a quorum of 3 members. At least 2/3<sup>rd</sup> of the members attending the meeting of the AC should be ID. The AC should meet at least once in a quarter. The meetings of the AC should be chaired by an ID who should not chair any other committee of the Board. The Chair of the AC should not be a member of any committee of the Board which has a mandate of sanctioning credit exposures. All members should have the ability to understand all FS as well as the notes/ reports attached thereto and at least 1 member should have requisite professional expertise/ qualification in financial accounting or financial management.

#### ▪ Age and tenure of NEDs

The upper age limit for Non –executive Directors (NEDs), including the Chairman should be 75 years and after attaining the age of 75 years no person can continue in these positions. The total tenure of an NED on the Board should not exceed 8 years. After completing 8 years on the Board the person may be considered for re-appointment only after a minimum gap of 3 years.

#### ▪ Tenure of MD & CEO and WTDs

The post of the MD & CEO or WTD cannot be held by the same incumbent for more than 15 years. Thereafter, the individual will be eligible for re-appointment as MD & CEO or WTD in the same bank, if considered necessary and desirable by the Board, after a minimum gap of 3 years, subject to meeting other conditions. During this 3-year cooling period, the individual should not be appointed or associated with the bank or its group entities in any capacity, either directly or indirectly. The extant instructions on

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upper age limit for MD & CEO and WTDs in the private sector banks will continue and no person can continue as MD & CEO or WTD beyond the age of 70 years.

The Banks are permitted to comply with these instructions latest by 1<sup>st</sup> October 2021.

**Issue of Guidelines for Appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SAs) of Commercial Banks (excluding RRBs), UCBs and NBFCs (including Housing Finance Companies)**

[RBI/2021-22/25 dated 27<sup>th</sup> April 2021](#)

These guidelines will be applicable to the Commercial Banks (excluding RRBs), UCBs and NBFCs including HFCs (Entities) for FY 2021-22 and onwards in respect of appointment/reappointment of SCAs/SAs of the Entities. Non-deposit taking NBFCs with asset size below Rs.1,000 crore have the option to continue with their extant procedure.

Since the RBI guidelines regarding appointment of SCAs/SAs will be implemented for the first time for UCBs and NBFCs from FY 2021-22, they will have the flexibility to adopt these guidelines from 2<sup>nd</sup> half of FY 2021-22 in order to ensure that there is no disruption. *Inter alia*, it states the following-

- **Prior Approval** -Commercial Banks (excluding RRBs) and UCBs will be required to take prior approval of the RBI for appointment/reappointment of SCAs/SAs, on an annual basis.
- **Number of SCAs/SAs**-For Entities with asset size of ₹15,000 crore and above as at the end of previous year, the statutory audit should be conducted under joint audit of a minimum of 2 audit firms [Partnership firms/Limited Liability Partnerships (LLPs)]. All other Entities should appoint a minimum of 1 audit firm (Partnership firm/LLPs) for conducting

statutory audit. It shall be ensured that joint auditors of the Entity do not have any common partners and they are not under the same network of audit firms.

- **Tenure and Rotation**- In order to protect the independence of the auditors/audit firms, Entities will have to appoint the SCAs/SAs for a continuous period of 3 years, subject to the firms satisfying the eligibility norms each year.
- **Reappointment**- An audit firm will not be eligible for reappointment in the same entity for 6 years (2 tenures) after completion of full or part of one term of the audit tenure.

**Guidelines for Appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SAs) of Commercial Banks (excluding RRBs), UCBs and NBFCs (including HFCs)**

The RBI has issued Frequently Asked Questions (FAQs) to clarify, *inter alia*, certain doubts in the industry on the tenure, eligibility criteria and it also clarifies that its “one year look back” stipulation introduced in its circular on appointment of statutory auditors will only be applicable prospectively, i.e., from financial year 2022-23.

[Read more](#)

**Resolution Framework – 2.0: Resolution of Covid-19 related stress of Individuals and Small Businesses**

[RBI/2021-22/31 dated 5<sup>th</sup> May 2021](#) and [RBI/2021-22/46 dated 4<sup>th</sup> June 2021](#)

With reference to [Circular dated 6<sup>th</sup> August 2020 \(Resolution Framework 1.0\)](#), the RBI has permitted the Lending institutions to offer a limited window to individual borrowers and small businesses to implement resolution plans in respect of their credit exposures while classifying the same as Standard upon implementation of the resolution plan subject to certain conditions. Following borrowers will be eligible for the window of resolution to be invoked by the lending institutions-



- Individuals who have availed of personal loans excluding the credit facilities provided by lending institutions to their own personnel/staff.
- Individuals who have availed of loans and advances for business purposes and to whom the lending institutions have aggregate exposure of not more than Rs.50 crore as on 31<sup>st</sup> March 2021.
- Small businesses, including those engaged in retail and wholesale trade, other than those classified as MSME as on 31<sup>st</sup> March 2021, and to whom the lending institutions have aggregate exposure of not more than Rs.50 crore as on 31<sup>st</sup> March 2021.
- The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This will be determined on the basis of exemption limit obtaining as on 31<sup>st</sup> March 2021.
- The aggregate exposure, including non-fund-based facilities, of all lending institutions to the borrower does not exceed Rs.50 crore as on 31<sup>st</sup> March 2021.
- The borrower's account was a 'standard asset' as on 31<sup>st</sup> March 2021.
- The borrower's account was not restructured in terms of MSME restructuring Circulars.
- The restructuring of the borrower account is invoked by 30<sup>th</sup> September 2021.
- The restructuring of the borrower account is implemented within 90 days from the date of invocation.
- If the borrower is not registered in the Udyam Registration portal, such registration will be required to be completed before the date of implementation of the restructuring plan for the plan to be treated as implemented.
- Upon implementation of the restructuring plan, the lending institutions should keep provision of 10% of the residual debt of the borrower.

### Conditions

- The borrower accounts / credit facilities should not belong to the categories listed in sub-clauses (a) to (e) of the Clause 2 of the Annex to the Resolution Framework 1.0.
- The borrower accounts should not have availed of any resolution in terms of the Resolution Framework – 1.0 subject to certain special exemption mentioned in the Circular.
- The credit facilities / investment exposure to the borrower should have been classified as Standard by the lending institution as on 31<sup>st</sup> March 2021.

### Resolution Framework 2.0 – Resolution of COVID-19 related stress of Micro, Small and Medium Enterprises (MSMEs)

[RBI/2021-22/32 dated 5<sup>th</sup> May 2021](#) and [RBI/2021-22/47 dated 4<sup>th</sup> June 2021](#)

Please refer to the [Circular dated 6<sup>th</sup> August 2020](#) on restructuring of advances to the MSME borrowers. The RBI has decided to extend the above facility for restructuring existing loans without a downgrade in the asset classification subject to the following conditions:

- The borrower should be classified as a MSME as on 31<sup>st</sup> March 2021 in terms of the Gazette Notification S.O. 2119 (E) dated 26<sup>th</sup> June 2020.

### Submission of returns under Section 31 of the Banking Regulation Act, 1949 (AACS) – Extension of time

[RBI/2021-22/49 dated 4<sup>th</sup> June 2021](#)

Many of the Primary (Urban) Co-operative Banks (UCBs), State Co-operative Banks and Central Co-operative Banks are facing difficulties in finalising their Annual Accounts due to the ongoing COVID-19 pandemic. The RBI has therefore, decided to extend the period of 3 months for the furnishing of the returns under Section 31 of the Act for the financial year ended on 31<sup>st</sup> March 2021, by a further period of 3 months.

Accordingly, all UCBs, State Co-operative Banks and Central Co-operative Banks should ensure

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submission of the aforesaid returns to the RBI on or before 30<sup>th</sup> September 2021. The State Co-operative Banks and Central Co-operative Banks should also ensure submission of the aforesaid returns to NABARD on or before 30<sup>th</sup> September 2021.

### Risk-Based Internal Audit (RBIA)

[RBI/2021-22/53 dated 11<sup>th</sup> June 2021](#)

The RBI has decided that the provisions of the [Circular dated 3<sup>rd</sup> February 2021](#) will be applicable to Housing Finance Companies (HFCs) also, as stipulated below:

- All deposit taking HFCs, irrespective of their size
- Non-deposit taking HFCs with asset size of Rs. 5,000 crore and above

These entities are required to **put in place a RBIA framework by 30<sup>th</sup> June 2022**, in accordance with the provisions of the aforesaid circular.

### Declaration of dividends by Non-Banking Financial Companies (NBFCs)

[RBI/2021-22/59 dated 24<sup>th</sup> June 2021](#)

The RBI has issued guidelines on distribution of dividend by NBFCs in order to infuse greater transparency and uniformity in practice. Salient features are given below-

- **Applicability**  
These guidelines are applicable to all NBFCs regulated by the RBI
- **Effective Date**  
These guidelines shall be effective for declaration of dividend from the profits of the FY ending 31<sup>st</sup> March 2022 and onwards
- **Board Oversight**  
The Board of Directors should take into account the following aspects while considering the proposals for dividend
  - Supervisory findings of the Reserve Bank (National Housing Bank (NHB) for HFCs) on divergence in classification and provisioning for Non-Performing Assets

(NPAs).

- Qualifications in the Auditors’ Report to the financial statements; and
- Long term growth plans of the NBFC.
- The Board should ensure that the total dividend proposed for the FY year does not exceed the ceilings specified in these guidelines.

#### Eligibility Criteria

Parameter	Requirement
Capital Adequacy	a) NBFCs (other than Standalone Primary Dealers) should meet the given applicable regulatory capital requirement for each of the last 3 FYs including the FY for which the dividend is proposed. b) Standalone Primary Dealers (SPDs) should have maintained a minimum Capital Adequacy Ratio (CRAR) of 20% for the FY (all the 4 quarters) for which dividend is proposed.
Net NPA	Should be less than 6% in each of the last 3 years, including as at the close of the FY which dividend is proposed to be declared.
Criteria	a) NBFCs shall comply with the provisions of Section 45 IC of the Reserve Bank of India Act, 1934. HFCs shall comply with the provisions of Section 29 C of The National Housing Bank Act, 1987 b) NBFCs should be compliant with the prevailing regulations/ guidelines issued by the RBI. The RBI or the

Parameter	Requirement
Other Criteria..	NHB (for HFCs) should not have placed any explicit restrictions on declaration of dividend.

▪ Quantum of Dividend Payable

Type of NBFCs	Maximum Dividend Pay-out Ratio
NBFCs that do not accept public funds and do not have any customer interface	No ceiling specified
Core Investment Company	60%
Standalone Primary Dealers	60%
Other NBFCs	50%

- A NBFC (other than SPD) which does not meet the applicable prudential requirement prescribed in above for each of the last 3 FYs, may be eligible to declare dividend, subject to a cap of 10% on the dividend payout ratio, provided the NBFC complies with the following conditions :
- meets the applicable capital adequacy requirement in the financial year for which it proposes to pay dividend; and
  - has net NPA of less than 4% as at the close of the FY.

Appointment of Managing Director (MD) / Whole-Time Director (WTD) in Primary (Urban) Co-operative Banks(UCBs)

[RBI/2021-22/60 dated 25<sup>th</sup> June 2021](#)

The RBI has issued directions for the appointment of MD/WTD in UCBs which, *inter alia*, prescribes educational qualifications and 'fit and proper' criteria and should not be holding the position of a Member of Parliament or State Legislature or Municipal Corporation or Municipality or other local bodies. It also states

that the MD/WTD should be a postgraduate or have qualifications in finance discipline. He or she could be either chartered accountant/cost accountant, MBA (finance) or have a diploma in banking or cooperative business management.

New Definition of Micro, Small and Medium Enterprises – clarifications

[RBI/2021-2022/63 dated 25<sup>th</sup> June 2021](#)

With reference to [RBI Circular dated 21<sup>st</sup> August 2020](#) it has been clarified that The existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAMs) of the MSMEs obtained till 30<sup>th</sup> June 2020 will remain valid till 31<sup>st</sup> December 2021 (*earlier 31<sup>st</sup> March 2021*).

# KEY TAKE AWAY

- Government with its vision of growth and changing needs of the economy, has further liberalized and streamlined FEMA regulations by bringing in reforms in FDI, ECB and bond market.
- The new norms for appointment of auditors will enhance the quality of audit and will bring in several capable audit firms into the banking and financial sector audit. It will also enhance auditor independence and strengthen corporate governance.



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